



PENNSYLVANIA MILITIA.

ADJUTANT GENERAL'S OFFICE, }
Philadelphia, May 24th, 1841. }

In obedience to the 60th section of the Militia Law passed in 1822, which provides "That when any doubts shall exist as to the construction of any part of that act on a military subject, it shall be the duty of the Adjutant General to take to his assistance two general officers, and they, or a majority of them, shall decide thereon; and which decision shall be conclusive as to the construction of said act, and shall be recorded by the Adjutant General in a book to be kept by him for that purpose; and a copy thereof, certified by the Adjutant General, shall always be legal evidence of the same," the Adjutant General appointed Brigadier Generals J. D. Goodwin, and A. M. Prevost, of the First Division, to meet him on the 22d day of March, 1841, at 11 o'clock, A. M.

Agreeably to the above requisition, the Adjutant General and above named general officers, met at the place appointed to examine points presented to the Adjutant General from various sections of this Commonwealth, and after several adjournments and deliberate consideration, they adopted the following preliminary exposition of their views.

This is not the first time since the passage of the law, that a board of officers has been convened under its 60th section; but the few questions hitherto agitated and disposed of were merely local. On this occasion decisions have been requested involving general principles. The powers of construction given by that section are unusually great; and the board, deeply impressed with the importance of the duties assigned to them, think it highly proper to state explicitly their understanding of these duties, and the general rules which, in their opinion, ought to guide them in their decisions.

That course seems recommended by a consideration of respectful deference to the legislature. The law has made a board of officers sole judges of the construction of one of its most voluminous and intricate acts—their decision conclusive, and a cer-

tified copy legal evidence. Those powers fall but little short of those hitherto entrusted to the highest tribunal in the state. A clear definition of the limits within which the board consider themselves authorized to act, will show the legislature the extent of the ground they mean to occupy. If that body should deem the extent of jurisdiction assumed inconsistent with the weal of the republic, it has it in its power either to abridge it or recall it altogether. If, on the contrary, it takes no action on the subject, the board and their successors may then safely proceed on the discharge of their functions.

By a reference to the 60th section, it must readily occur that the expression "on a military subject" is that which has given rise to serious deliberations; for at first sight it seems difficult to view the whole of a militia law in any other light than as passed on a military subject. Yet it was manifestly the intention of the legislature to establish a distinction between the military and civil clauses which composed it.

This has led the board into an examination of the sections and their nature, and they have classed as coming clearly among those subject to their power of construction—

All those parts of the law establishing the limits of the military divisions, and prescribing the organization of brigades, regiments, battalions and companies of enrolled militia; of regiments, battalions and companies of volunteers.

The enrolment of the militia; proceedings in elections for commissioned officers of volunteers and militia; in cases of contested elections; mode of filling vacancies, when regular elections of militia officers cannot be had.

The trainings of volunteers and militia; the regulations for the uniforms of volunteer and militia officers and volunteer corps.

The rules for the rank of officers, as well as that of volunteer companies, agreeably to date of organization, as established in this state only.

The duties of the Adjutant General and of the Brigade Inspectors.

The organization of the volunteers and militia when called into the service of the United States, or that of the State.

The bye laws of volunteer corps.

The issues of arms.

The provisions for encampments of volunteers.

The organization of courts martial.

The board consider as beyond the limits of their powers of construction—

The proceedings and decisions of courts martial.

All provisions for the collection of fines by magistrates, constables, and other civil officers.

Recoveries of fines imposed on citizens of this state for non performance of military duty during last war.

Penalties for inducing desertion.

Exemption of property from civil process during a tour of service; of uniforms, arms, and military accoutrements from distress and executions.

Accountability of the Brigade Inspectors with the Auditor General; expenses for holding elections of officers, courts of inquiry and courts martial; penalties for concealing public military property, for selling liquors within prescribed limits of parades and encampments.

Power of the Governor to remove delinquent Brigade Inspectors.

Various exemptions from militia duty.

Having thus endeavored to define the line of demarcation which in their opinion the legislature meant to establish, the board proceed to a declaration of the principles upon which they think themselves bound to base their future decisions.

By the constitution of the United States, the arming and disciplining of the militia was made the duty of congress. That power has scarcely been exercised, and every state has been obliged to enact sectional laws, instead of receiving a national organization from the central government;—hence the discrepancies which occur between the systems of different states. But be those what they may, it is evident that the framers of those state regulations can have had but one object in view—that of rendering the militia a strong arm in aid of the civil authorities for the maintenance of the peace of the state, and an efficient auxiliary in the defence of the United States. For that purpose they invariably endeavor to assimilate its organization, arms, uniforms and discipline as near as practicable to those of our regular troops.

The efficiency of the militia being then considered as the primary object of our legislature, whenever a question may be presented to this board, and a doubt raised as to the intention and meaning of any portion of the acts, the board believe it their duty to lean to that side which, upon a broad view

of all its bearings, will contribute most to enforce that organization, strict discipline and subordination, which alone fit citizen soldiers for the service of their country.

FIRST QUESTION.

The first question presented to the discussion of the board, was from the Brigade Inspector of the First Brigade, First Division, Pennsylvania militia—

Whether within the bounds of said brigade any independent battalions of volunteers can be formed, except battalions of artillery, especially provided for by the 34th section of the act of 1822?

The 33d section enacts that any volunteer troops or companies, except within the bounds of the first brigade, first division, may be formed into battalions or regiments, *although not of the same description of troops or force.*

This is followed by a specification of the number and grade of officers to which battalions shall be entitled, according to the number of troops or companies which may constitute them.

Section 34th provides that within the bounds of the first brigade, regiments of volunteers shall be formed of troops and companies *of the same description of arms.*

It appears from the provisions of the 33d section that the legislature wished to give every facility to the organization of volunteers into regiments or battalions throughout the state. It allows of battalions of six, five, four or three companies or troops, and even (page 79) of two troops of cavalry.

It appears also that no other restriction is imposed on the volunteers of the first brigade, except that their regiments must consist of troops of the same description of arms.

The board can perceive no ground why the volunteers of the said brigade should be deemed an exception to the general system, and are therefore of opinion that within the bounds of the first brigade aforesaid, battalions may be formed, but subject to the same restrictions as to uniformity of arm as regiments: battalions being only fractional parts of regiments, and intended to be united into one whenever two of the same description of arm can be raised containing the requisite number of troops and companies.

SECOND QUESTION.

Whether volunteer corps have the right of inflicting on their officers or members higher fines for non-attendance at their trainings, than those specified in the 23d section of the act of 1822?

By the 35th section members of volunteer corps are made subject to the same fines for non-attendance at parades for inspection, and such other trainings as shall be determined upon by said corps, as in the case of troop or company trainings, and to be collected in the same manner for the use of said troops and companies respectively. The 37th section allows volunteer corps to reduce those fines to one half of the amount on any training days except those established by law for the training of the militia.

The legislature has thus clearly established the

maximum and the minimum of fines; the board is therefore of opinion that the imposition of any fine on any training day whatever, higher than is specified by the 23d section, is inconsistent with the law of the state.

THIRD QUESTION.

Does a volunteer who has served seven years as a regular member of a volunteer corps, conforming to the requisitions of the 47th section, forfeit the privilege of exemption thus acquired, either by continuing in the same corps or enrolling himself in another, after the expiration of said seven years?

As an incentive to joining and remaining attached to volunteer corps, and performing faithfully the duties of a citizen soldier, the legislature has thought proper to enact that any volunteer who shall have served seven successive years as a member of any organized volunteer corps, shall *forever* thereafter be exempted from militia duty, except in time of invasion, insurrection or actual war.

The legislature thus reserves to the state the right of calling upon such an exempt whenever the country stands in need of his services.

Instances have occurred of companies refusing to accept the resignation of such exempt members.

The board hold the power of volunteer corps to make all necessary bye-laws, rules and regulations, as clearly restricted by the condition that they shall not be inconsistent with the law of the state, or of the United States. They are of opinion that the privilege secured to the volunteer after seven years faithful service, cannot be forfeited by any action of his own. Any corps enrolling or retaining such an exempt, do so with their eyes open, just as when they receive in their ranks ferrymen, custom house officers, postmasters and their clerks, and others protected by the 8th section. In practice, it is believed that more harm would be done to the volunteer system, by destroying the validity of the privilege of exemption in any case, than benefit derived from holding to the rolls a reluctant member, in time of peace and internal tranquility.

FOURTH QUESTION.

Has the Adjutant General the right to insist on a regulation lately adopted by him, that no arms shall be delivered to any volunteer corps unless such corps be provided with a sufficient armory for the safe keeping of the same, in addition to requiring the usual bonds from the officer commanding the same?

The board find in the 44th section, that the Adjutant General is *required* to make such regulations relative to the amount and kind of security to be given for arms and accoutrements delivered to volunteer companies, as well as all such other regulations for the *disposition, security and preservation* of the arms and military property of the commonwealth, as he may from time to time find necessary and proper to promote the public interest.

That section sufficiently establishes the right of the Adjutant General to make such a regulation as the one referred to, and the board are unanimous in their opinion of its propriety.

FIFTH QUESTION.

Can a Brigade Inspector hold at the same time a commission as an officer in any corps of volunteer or militia?

The board have sought in vain in the law for any passage which even by the most strained construction, might warrant a supposition that the legislature ever suspected or much less contemplated so singular a cumulation of powers in the same individual.

But they find among the multifarious civil and military duties of a Brigade Inspector, many which are clearly incompatible either with a commission in the volunteers or militia, or even a membership in any volunteer corps.

The state requires Brigade Inspectors to see that all the laws relative to the militia of their brigade be properly enforced, and for that purpose clothes them with extensive civil and military powers.

They are especially entrusted with the inspection of the different corps from the highest officer in rank to the private, and directed to see that they are one and all, armed and equipped according to law: that their trainings take place on the days directed by the act; that fines be inflicted and collected; that proper bonds and securities be given for the safe keeping and return of arms delivered.

That an officer should inspect himself or become sole judge of his own bond and securities, or pursue legal measures for the recovery of fines for which he is liable, seems too great an absurdity to be seriously entertained.

In time of actual service, how could a Brigade Inspector direct the drafts of the militia, the organization of detachments about to march, the appraisal of officers' horses; while as commander or member of a volunteer corps he would be bound to take the field in the first place, or as an officer of militia to march off afterwards.

It would be endless to enumerate the many false positions in which a Brigade Inspector, thus situated, would be thrown at every step. They are repugnant to all ideas of discipline, and would entirely destroy the responsibility which the legislature has very properly connected with the office.

The board are clearly of opinion that no Brigade Inspector can hold at the same time a commission of officer of volunteer or militia, or be a member of a volunteer corps.

And in testimony of our having made the foregoing decisions, we have hereunto set our hands on the said twenty-fourth day of May, eighteen hundred and forty-one.

JOHN D. GOODWIN,
Brigadier General 2d Brigade 1st Div. P. M.
ANDREW M. PREVOST,
Brigadier General 1st Brigade 1st Div. P. M.
ADAM DILLER,
Adjutant General P. M.

I certify the above to be a true copy of the decisions recorded in the Adjutant General's book of records.

ADAM DILLER,
Adjutant General P. M.

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